G. R. S. III—1] 1910.

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 215-47

FILE HEADING.

Execution of foreign decrees within the State.

From

E. A. Resident in Mysore

No. 2416 Dated 18th Mar 1920 Received on 20th Mar 1920

Diary No. 1720	Enclos. 1 Spare Copies. nil	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Encloses for consideration & opinion, a copy of letter & 18 enclosures from the Dt. Judge Civil & Sessions Station of Bangalore regarding the Execution of Ex parte decrees stating that it is necessary, in the interest of the proper administration of Justice that Ex parte decrees should be executed in the same way as other decrees.

NOTES AND ORDERS.

1) Asst Secretary's order on the Paper under disposal
"Please put up draft forwarding Copy & inviting the opinion of the Chief Court." (Init) P.M. 20/3 -

2) The subject has been discussed at various times & the file

NOTES—First Sheet.

G. R. S. III-2]

17209 2

General and Revenue Secretariat.

C/5 File No. 218 of 1919.

Serial No.

relating to this are put up for reference (if needed). Submitted ~~for~~ a draft ~~according~~ as per order

2) is also put up.

3) The files relating to various notifications referred to in the P.W.D.) as far as available have been put up, & flagged. However, three more files relating to :—

1) Notification no 112 of 23rd July 1878

2) Resn letter no 2772-5636 of 6th Oct. 1886.

3) Mysore Govt. letter no 87 of 3rd Feb 1887

are not traceable & if approved, this may be sent to the Records for putting up the files referred to.

Submitted

24/3/1920

4) Please dispose-submit with the Records (A)

D.W. 27/3

Available copies of reports are put up

2 To

The Registrar, Chief Court.

No. G. 23110 dt 7th April 1920.

Calls for the opinion of the Chief Court in the matter of execution of Ex-parte decrees in the same way as other decrees.

5) This may be sent to the Records for putting up the required references noted in para (3) above

Submitted

8/4/1920

P.T.O.

I.L.R. [illegible] C.C.R. 299.

ISSUE & RESUBMIT.

NOTE—Contn. sheet.

G. R. S. III-2]

17209

General and Revenue Secretariat.

Ch File No. 216 of 1917.

Serial No.

V. Sub.

(8)

(9) Submitted with a draft reminder

(10) Refers 1) Ch 2 of 1886
2) 32 of 1912 (1)
3) 172-1 (1)
4) 314-11 (102)
5) 61-12 (1-3)
letter to Mysore
reference in 22/5/20

(11) Asst. Secretary's orders on the paper under disposal:—

Issued No. G. 26753 dy 29-5-1920.

From,

The Registrar, Chief Court of Mysore

R.O.C. no. 1116/19-20 & 17/18 dt. 14th June 1920 & recd on 22-6-1920 states that the Judges are of opinion that this is possible only in case the Govt of India also treat the Mysore decree also in the same way or in case the proposal comes from the Govt of Mysore for the reason that the whole question is a question of territorial jurisdiction & not that of Convenience either to parties or to Courts.

(1) The references quoted in para 3 of the notes are put up. The references are complete now, except B.J. 10/14. Apdx 1874 which is not traceable. A copy is put up. (H.T.)

(7) Please put up after the opinion of the Chief Ch is received

D.M. 28/5

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

Ch File No. 205 of 191 .

23137

4

Serial No.

"Please put up draft reply to the D.C. Judge, C&M Station as proposed in the last two paras of this letter"

(Ind) P. M 21/6.

(12) The letter has to be addressed to the ~~Dist Judge~~ the Resident and not to the District Judge.

(13) It is also submitted for orders whether the Government have not to consider the question before any reply is made.

(14) However, as ordered a draft is put up to the Resy

Subd.
KR
23/6/20.

(15) Subd, with the opinion of the Chief Court, for orders.
A Draft reply is put up for consid

D. M. 1/7

Chief Secy
III Member

(16) Subd with a fresh draft reply as instructed.

D. M. 1/7

Chief Secy (18)

3rd member } (20) Invalid esy
Dewan } Invalid 1/7.
Copy of the Chief Court's letter which explains
necessity of Dissd
Draft ~~replied~~ revised
D. M. 1/7

Subd
1/7

(22) Chief Secy 23.7.20

(23) D. M. 24/7

(17) All the references excepting 39 marked ('A') which is not available in the ~~Chief~~ Secretariat Library

Subd
KR
23/7/20

482/17-20

DEWAN'S OFFICE.
Recd. on JUL 22 1920
Reg. No. 509

G. R. S. III-2]

General and Revenue Secretariat.

File No. 2313 of 1919.

5

Serial No.	
	23) May Draft issue? D. M. 26/7 Chief Secy 24 Issue D. M. 26/7
4	To The F. A. Resident in Mysore. No. Pol. 126 Dy 28th July 1920. Forwards a copy of Chief Court's letter re: the execution of ex-parte decrees in the State & agrees with the view of the Hon'ble the Resident that a mutual arrangement between the C & M Stns & the State is desirable & informs that if the requisite legislation is brought into force in the C & M. Stns, the Durbar will undertake suitable legislation in due course.

B 4/8

AUG 1920

NOTE—Contn. sheet.

6

Pol 12-30

R. O. 2.—R. P. B.—2—1902.—5000.

No 2416 Encl. 1.

17209

From

MAJOR C. T. C. PLOWDEN, I. A.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

TO

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore.

Dated Bangalore, 18th March 1920

SIR,

I am directed to forward, for consideration and favour of an expression of the views of the Durbar, a copy of a letter No. 3447, dated the 18th December 1919, from the District Judge, Civil & Military Station of Bangalore regarding the execution of ex parte decrees, and to say that the Hon'ble the Resident considers that, in the interest of the proper administration of Justice, it is highly necessary, so far as the relations between the Civil & Military Station and the Mysore State at any rate are concerned, that exparte decrees of the nature in question should be executed in the same way as other decrees.

I have the honour to be,
Sir,
Your most obedient servant,

FIRST ASSISTANT RESIDENT.

Letter No. 3447, dated the 18th December 1919, from the District Judge, Civil and Military Station, Bangalore, to the First Assistant to the Resident in Mysore, Civil and Military Station, Bangalore.

****

I have the honour to address the Residency on the subject of reciprocal arrangements that have hitherto existed in the matter of execution of decrees of Civil Courts in the Mysore State and in the Civil and Military Station of Bangalore.

2. Under Notification No. 112, dated the 23rd July 1878, issued by the late Chief Commissioner of Mysore, all decrees of any court established in British India, which cannot be executed within the jurisdiction of the court by which it was made, may be executed in the manner provided in the Code of Civil Procedure within the jurisdiction of any Court in Mysore. This Notification is still in force in the Mysore State as it was included in the schedule to the Instrument of Transfer granted to His Highness the Maharaja in 1881 and has subsequently been embodied also in the schedule to the Treaty of Mysore concluded on 26th November 1913 as one of the laws to be maintained and efficiently administered in the State. A provision to the same effect was made in section 229 of the Code of Civil Procedure as intorduced by Mysore Regulation II of 1884. The section was amplified in 1903 by extending its scope to decrees of Revenue Courts, and this provision as thus enlarged has been reproduced in section 43 of the revised Code of Civil Prodedure enacted in 1911.

3. The British Government on their part have also agreed to the decrees of the Mysore Courts being executed by courts in British India. In Foreign Department Notification, No. 233.I., dated 25th November 1801, the Governor-General in Council has declared that the decrees of the Civil and Revenue Courts of Mysore may be executed in British India as if they had been made by the courts of British India. This declaration is still operative and has now to be regarded as having been made under section 44 of the Code of Civil Procedure, 1908 (V of 1908).

4. In regard to the Civil and Military Station of Bangalore,

since the rendition in 1881 a reciprocal arrangement has existed between the Mysore Durbar and the British Government in the matter of execution of decrees of Civil Courts. In Residency letter, No. 2772-5636, dated the 6th October 1886, it was proposed to the Durbar that this arrangement should be based on a legal basis by the issue of necessary mutual orders to the courts under the control of the Durbar and the Residency. The Durbar accepted the proposal in their letter No. 37, dated the 3rd February 1887. As a result of this correspondence, the Government of India issued their Notification No. 1652.I, dated the 13th April 1887, empowering the courts in the Civil and Military Station of Bangalore to execute the decrees of courts in Mysore as if such decrees had been passed by courts in the station. With a view to carry out their part of the arrangements, the Durbar passed their Regulation II of 1887 under which decrees of courts established by the Governor-General in Council in the territories of any Foreign Prince or State are executable in Mysore. The provisions of this Regulation have been incorporated in section 43 of the Revised Code of Civil Procedure, 1911, as now in force in Mysore. The Government of India have also notified (see Notification No. 2623.I.B., dated the 24th December 1912) that the Mysore State has agreed to the execution by the courts in Mysore of decrees passed by civil courts established or continued by the authority of the Governor-General in Council in the territories of any Foreign Prince or State.

5. In pursuance of these arrangements there has been since 1881 complete reciprocity between the British and Mysore Governments in regard to the execution of decrees of civil courts. Recently, however, courts in British India and Mysore have introduced a reservation in this matter. Following the Privy Council decision in the Faridkot case in 1894, Gurdyal Sing vs Raja of Faridkot (I.L.R.22.Cal,222), where it was laid down that in a personal action a decree pronounced by a court of Foreign State in absentem, the absent party not having submitted himself to its authority, is by international law a nullity, Jinappa Timmappa vs Jeergi Murugeappa (I.L.R.40,Bom,551) the Bombay High Court has recently held that an exparte decree passed by a court in Shimoga District in the Mysore State against a resident of the Bombay Presidency is a nullity and not executable in British India. A full Bench of the Madras High Court has also expressed a similar view in connection with an application for the

execution in British India of a decree passed by a court in Cochin State - see Veeraraghava Aiyar vs Muga Sait (I.L.R.38 Mad, 24). In the Madras case it was pointed out that a Notification had been issued by the Governor-General in Council under section 44 of the Code of Civil Procedure declaring "that the decrees of the Cochin Court may be executed in British India as if they had been passed by the courts of British India"., and it was urged that the decrees of the Cochin Court could not therefore be impeached on the ground that it was passed without jurisdiction. The judgment of Sadasiva Aiyar, J. in that case set forth several considerations for treating the decrees of privileged Native States notified under section 44 of the Code in much the same way as decrees of British Indian Courts, but these considerations do not seem to have prevailed with the other judges of the court that decided the case. In consequence of these decisions of British Courts, the Mysore Chief Court has, on its part, held in 1917, that an exparte decree by a foreign court against a person who at the time was a resident of the Mysore State and had not submitted himself to the jurisdiction of the foreign court, is a nullity which the court to which it is transferred may refuse to execute see Makam Naraniah vs Eddogi and Appaiappa vs Papanna (1917), Vol 22, My.C.C.R, pages 186 and 188. The Chief Commissioner's Notification of 23rd July 1878, No. 112, which as noted in para 2 supra, has still the force of law in the Mysore State, does not seem to have been brought to the notice of the judges of the Chief Court when the cases were argued at the bar. The terms of that Notification cover all decrees, exparte or otherwise, passed by courts in British India, and it is perhaps arguable that it is obligatory on the courts in Mysore to execute all such decrees in the manner prescribed in that Notification. However, the Chief Court has introduced a reservation in the case of eaparte decrees basing their decisions on the pronouncement of the Privy Council in the Faridkot case (I.L.R.22.Cal,222) which was subsequently followed by the Bombay High Court in Jivappa Thimmappa vs Jeergi Murugappa (I.L.R.40 Bom, ...

6. The object of section 44 of the Code of Civil Procedure is evidently the provision of a simple effective, inexpensive and expeditious procedure for enforcing in British India decrees of courts of such Natives States as have a regularised civil administration, in addition to the more tardy, complicated and expensive mode allowed by law for enforcing a judgment

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of a court of a Native State or of any other foreign court by means of a fresh suit founded on such judgment. This simple machinery has been provided both as a matter of comity and on grounds of convenience. As a result of diplomatic negotiations with such privileged Native States, the Governor-General in Council has issued notifications under that section declaring that the decrees of the courts of such Native States are executable in British India. Conversely, the Native States concerned have made statutory arrangements for execution by their courts of the decrees of civil courts in British India. The intentions of the legislature and the Governments concerned will to a large extent be frustrated by the restricted interpretation which has now been placed by the courts in respect of exparte decrees, which form the larger proportion of decided cases. Under the law as now propounded, a person seeking relief against a resident of a neighbouring state in India will, in future, be put to the necessity of laying his action in the court in whose jurisdiction the defendant resides and prove his case there, and not in the court within whose jurisdiction the cause of action arose and where witnesses to the transaction may reside. This will cause great inconvenience and embarrassment to people resident in Native States and British India and will impair in course of time their commercial intercourse and credit transactions. For, it cannot be expected that people prone to evade their contractual obligations will voluntarily leave their domocile and submit themselves to the jurisdiction of a foreign tribunal, where they had contracted, for the purpose of meeting actions brought against them there, and as a knowledge of the present day decisions spreads in the country, actions laid in courts of localities where cause of action arose against non-resident foreigners will mostly result in exparte decrees which will be found later on to be infructuous in execution. All the elaborate negotiations conducted and agreements come to between the British Government and Durbars in the matter of speedy enforcement of the degrees of their courts will then become futile, much to the delight of the dishonest debtor, and detriment of trade and social well-being. The present unsatisfactory situation in this respect seems therefore deserving of being brought to the notice of the Government of India with a view to the adoption of the necessary remedial measures.

7. But what is of greater moment to the Civil and Military Station and perhaps also to the Mysore State, is the recent applicati[illegible]

courts of the principle of the decided cases referred to above to exparte decrees passed by courts in the station and in the Mysore State. In Abdul Razack Sab vs Seeniah (1918) Vol. 23, My C.C.R. page 299) the Mysore Chief Court had held that the courts of the Civil and Military Station of Bangalore are as much foreign courts in the matter of the execution of their degrees in Mysore as any other court in British India and that an exparte decree passed by the District Court of the station against a non-resident foreigner who had not submitted to its jurisdiction is not executable by courts in Mysore territory. The District Court of the station has likewise held in a recent case that an exparte decree passed by a Mysore Court against a resident of the station under like circumstances was incapable of execution in the station. For nearly 40 years courts in the Station and in the Mysore State have, under statutory authority hitherto considered adequate for the purpose, recognised each other's decree and have enforced them within the limits of their territorial jurisdiction much in the same manner as they do their own decrees. It may be that the courts have now discovered the errors of the past and have propounded the law correctly in the recent cases. But such exposition introduces a novel situation and unsettles the long established and well understood practice followed uninterruptedly for very many years. Even under the favourable conditions which have till now prevailed, the execution of decrees in the station - and I believe also in the adjoining parts of Bangalore - has always been a matter of difficulty, for, if the elusive debtor steps across the border, as he often does, the arm of the law for the moment is paralysed In the new situation brought about by the recent case laws, a more complete refuge to him will be afforded, both in regard to his person and property, under cover of the law. The station being an enclave as it were will be a sort of haven for elusive and dishonest debtors from Mysore territory, and the station debtors will enjoy similar immunity in the adjoining parts of Bangalore and elsewhere in the Mysore State. This will reflect in course of time on commercial intercourse and credit transactions between the inhabitants of the station and the Mysore State. The only course now permissible to a creditor to combat this ~~xxxix~~ evil is by means of an action in the forum of the domicil of the debtor, either at the outset on the original cause of action or subsequently on what would be ~~xxready~~ regarded by that forum as a foreign judgment, and, as has already been pointed out

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Both these courses are open to the objections of inconvenience, dilatoriness, expense and inexpediency. In these circumstances I have thought it necessary, in the interest of proper administration of justice, to bring this matter to the notice of the Hon'ble the Resident for such action as may be deemed advisable.

8. As a result of the correspondence which took place between the Residency and the Durbar in 1886-87, complete reciprocity was agreed to be established in the matter of execution of <u>all</u> decrees of civil courts in the Civil and Military Station and in the Mysore State. The legislation which was undertaken in Mysore to give effect to this agreement is now pronounced to be defective. If approved the Durbar may now be requested to state how they propose to deal with this lacuna. If the Durbar decide to set matters right by necessary legislation, the law in force in the station may also be amended so as to give full effect to the intentions of the original arrangement.

****

C O P Y

REGISTRAR.

RESIDENT'S OFFICE.

I.S

276

113

G. R. S. VI—G/32]

SUBJECT Calls for the opinion of the Chief Court in the matter of execution of ex parte decrees

Diary No. of letter replied to 1105

GENERAL AND REVENUE SECRETARIAT
( )
the 191

Section
File No.
Serial No. 2

No. G 2310

Date of issue 7/4

Signed by M. Pm

To

The Registrar

Chief Court of Mysore

Sir,

I am directed to forward herewith ~~for consideration & favour of an Opinion of the Judges of the Chief Court~~, a copy of a letter No. 3447 of the 18th Dec 1915, from the District Judge, Civil & Military Station regarding the execution of ex parte decrees in the same way as other decrees.

D. M.

2/3 I have &c

over.

Received through the Hon'ble the Resident in Mysore

and to request you to favor us with the views of the Judges in the matter.

Rr Chief Secy

Rl
Engd

14 23137.

Ch Sect
19 JUN 1920 Rec no 1116
G. 2.

Bangalore, Ch SECTION
Dated 17th June 1920. 218 3

From

G. Sreenivasa Iyer, Esq., B.A., M.L.,
Registrar of the Chief Court of Mysore.

To

C. S. Balasundaram Iyer, Esq., B.A.,
Chief Secretary to the Government of Mysore,
Bangalore.

Adverting to your letter No.G.23110/Cts.218-19-2 dated the 7th April 1920 forwarding for opinion of the Judges a copy of letter No.3447 dated the 18th December 1919 from the District Judge, Civil and Military Station, regarding the execution of ex parte decrees in the same way as other decrees, I am directed to state that there is no doubt inconvenience to creditors in some cases but if as is stated in the letter the greater proportion of decrees are made exparte, the inconvenience is not so great as it seems. Witnesses are not required if no defence is made and in Mysore the Courts give a decree on the plaint alone without so much as an affidavit from the plaintiff. The plaintiff then need only send his plaint and a vakalat to a pleader in the Mysore Court, and if no defence is made he need never go near the place himself; after all he has to execute his decree in Mysore in any case when the defendant has no property in the Civil and Military Station. But of course it may be often the case that a debtor who will not take the trouble to put in a defence if he has to come to the Civil and Military Station to do it, would do so if the plaint was presented in a court near his home, just by way of delaying things -- giving the plaintiff all the trouble he could. But the question is not merely one of convenience

to

B.

to plaintiff or defendant.

The question is whether His Highness the Maharaja is prepared to give the courts of the Civil and Military Station jurisdiction over his subjects in other parts of the State. At present a Mysore subject against whom a decree is made by a British Indian Court, cannot resist execution in Mysore, if he has submitted to the jurisdiction of the British Indian Court. That is the test, and if the defendant does not appear and makes no defence he does not submit to the jurisdiction. Jurisdiction is essentially territorial and of course the Civil and Military Station Court deals with the cases which come within its jurisdiction under its Code of Civil Procedure: it is bound to accept a plaint and make a decree but has no power to make a Mysore Subject accept its decree if he is resident in Mysore. The decree is of course good in the jurisdiction of the court making it and can be executed there if there is property there of the judgment-debtor or if the judgment-debtor is found there.

The provisions in the Mysore Civil Procedure Code and the British Indian Code for the execution of 'foreign' decrees were intended to avoid the necessity of a suit on a foreign judgment. That is a matter of procedure. They were not intended to extend the jurisdiction of the foreign court into the other State. If the Government of India agree to let the Courts in Mysore, say a Village Court, bind a resident, say of Delhi, by a decree made in his absence, the Courts in Mysore may do likewise; but there is not much chance of the Government of India doing it even as regards residents of the Civil and Military Station.

The Government of India refused not long ago to allow warrants of arrest for witnesses to be executed reciprocally as between the Civil and Military Station and the

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Courts in Bangalore District and they are not likely to take the much bigger step of giving Mysore Courts jurisdiction in the Civil and Military Station and of course His Highness the Maharaja will not permit the Courts of the Civil and Military Station to exercise in Mysore a jurisdiction denied to his own courts.

So the Judges are of opinion that if there is to be any change in the manner decided by the District Judge of the Civil and Military Station, Bangalore it is better that he should ascertain whether the Government of India is prepared to take any action before applying to Mysore.

A change such as is proposed would not affect the courts: their business would be to give effect to it and that would be a matter of no difficulty. And as between the Civil and Military Station and the rest of Mysore, the change may be desirable: and it is possible that the Government of India might consider it: the most that the Judges would suggest is that the Mysore Government might well be prepared to accept the proposal if the Government of India offer it.

I have the honour to be,

S i r,

Your most obedient servant,

T Sanjivasahr

R e g i s t r a r.

Tks.

Courts 218—19-4o.

Fair Copy.

17

To
The Hon'ble the
First Assistant Resident in Mysore.

Sir,

With reference to your letter No.2416 dated 18th March 1920 forwarding for consideration a copy of letter No.3447 dated 18th December 1919, from the District Judge C & M Station, Bangalore, regarding the execution of ex-parte decrees, I am directed to state that the situation has been clearly explained in the letter of the District Judge, C & M Station. The Durbar agree with the view of the Hon'ble the Resident expressed in the letter under reply that a mutual arrangement between the State and the C & M Station in regard to the execution of 'ex-parte' decrees is very desirable in the interests of the administration of justice.

In view however of recent judicial decisions as explained by the District Judge, C & M Station, the arrangement can only be given effect to by necessary legislation in both the areas.

If the requisite legislation is brought into force in the C & M Station, the Durbar will be glad to undertake suitable legislation in the State in due course.

I have etc.,

Chief Secretary to Government.